



State of Indiana

October 21, 2016

Response to the FEDERAL COMMUNICATIONS COMMISSION

In the matter of

**Procedures for Commission Review of State
Opt-Out Requests from the FirstNet
Radio Access Network**

Submitted by the:

Integrated Public Safety Commission

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October 21, 2016

Mr. Roberto Mussenden
Policy and Licensing Division
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th St SW., Room TW-A325
Washington, DC, 20554

Dear Mr. Mussenden,

On behalf of the State of Indiana, the Integrated Public Safety Commission (IPSC) appreciates the opportunity to provide comment on the Notice of Proposed Rulemaking regarding the proposed procedures for determining the Federal Communications Commission's (FCC) role and responsibilities in administering the FirstNet Radio Access Network (RAN) Opt-Out process, as defined in the *Middle Class Tax Relief Act*, PL, 112-96 ("Act").

On the forthcoming pages, we present comments on selected questions from the FCC's Notice of Proposed Rulemaking in the matter of *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network* (FCC 16-117). Selected FCC questions are provided in blue italics with IPSC's response immediately following the question.

We appreciate the opportunity to provide comments and look forward to working with the FCC on this important public safety endeavor for our nation.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "David W. Vice".

David W. Vice,

Executive Director, Integrated Public Safety Commission
FirstNet Single Point of Contact
100 N. Senate Avenue, N825
Indianapolis, IN 46204

CC: Cynthia Wenzel Cole
Susan Gard
John Hill



Response from the State of Indiana, Integrated Public Safety Commission

IPSC notes that Section 49 of the NPRM states:

49. With respect to the Commission's role in the opt-out process, we tentatively agree that Congress did not intend to permit states to delay their notification to the Commission beyond the 90 days provided for states to determine whether or not to opt out. In order to implement the provisions of the Act relating to the Commission's responsibilities for reviewing state opt-out plans, we therefore propose to codify in our rules a requirement that states electing to opt out of the NPSBN must file a notification with the Commission no later than 90 days after the date they receive electronic notice from FirstNet as provided in Section 6302(e)(2). We also propose to require that the state's opt-out notice to the Commission certify that the state has also notified FirstNet and NTIA of its opt-out decision. We believe that this approach is consistent with the Act and FirstNet's interpretation thereof. We also believe that this approach appropriately treats the timeline within which Governors are required to provide notice as coextensive with the timeframe within which Section 6302(e)(2) requires them to decide whether to opt out. We seek comment on these proposals and on our rationale.

We believe the FCC's interpretation and rationale regarding the 90-day deadline reflects the requirements articulated in the Act. Additionally, we support the FCC's interpretation that the opt-out notice should include a statement that the opt-out state has notified the National Telecommunications and Information Administration (NTIA) and FirstNet of the decision, as this reflects the intention of the statute.

IPSC notes that Section 51 of the NPRM states:

51. With respect to the RFP process, we seek comment on what showing should be required for a state to demonstrate that it has "develop[ed] and complete[d]" an RFP within the 180 days required by the Act. In its Final Interpretations, FirstNet states that an RFP may be considered complete once a state "has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i)." How far must a state have progressed in the RFP process to meet this standard? If the state has released an RFP but has not received bids or awarded a contract within the 180 days, should its RFP be deemed incomplete? However RFP completion is defined, we propose that if an opt-out state fails to meet this requirement within the statutory 180 day period, the consequence should be that it forfeits its right to further consideration of its opt-out application by the Commission. This is consistent with FirstNet's interpretation and we believe it is consistent with the Act's emphasis on speed of deployment of the NPSBN. We seek comment on this proposed approach.

We believe a copy of a completed RFP document accompanied by a cover letter outlining the current status of the procurement effort is sufficient to assess compliance to this milestone. If the



intention of the statute were to require bids or a contract award to claim completion, we believe the Act would have described this milestone as a "Vendor Selection" or "Contract Award" instead of "*shall develop and complete requests for proposals.*"¹

IPSC notes that Section 53 of the NPRM states:

53. We also seek specific comment on what an opt-out state should be required to include in its alternative plan in order for the plan to be considered complete for purposes of the Commission's review. As described in greater detail in section III.C. below, our tentative view is that the plan as filed with the Commission must, at a minimum, (1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in Sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability. We seek comment on this approach. Should there be a standardized organization scheme or format for alternative plans to ease their evaluation? Should we require plans to include separate sections for each of the four RAN categories (construction, maintenance, operation, and improvements)? We also seek comment on whether we should allow a state to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision. Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer? If a plan is deemed sufficient for our purposes before a state awards a contract pursuant to its RFP, should we condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its "ongoing" interoperability evaluation?

We support the FCC's suggested approach for an outline or guidance document described in the Notice of Proposed Rulemaking (NPRM) which reflects the scope outlined in the statute. The development of a detailed content outline or template by the FCC's Public Safety & Homeland Security Bureau (PSHSB) would be helpful in ensuring that the development, assessment and evaluation of SAP filings proceeds efficiently for all involved, decreasing overhead and improving overall turn-around times.

We also believe the FCC should allow amendments of supplemental information and FCC staff should be permitted to discuss and seek clarification from the filer.

IPSC notes that Section 54 of the NPRM states:

54. Additionally, we seek comment on who should have access to and the ability to comment on state alternative plans. In this regard, we seek comment on the extent to which state alternative plans may contain confidential, competitive, or sensitive information or information that implicates national security. Should state plans be treated as confidential, with public notice limited to identifying which states have elected to opt out and filed an alternative plan? Despite

¹ See Section 6302 (E) (3) (B)



the possibility that state plans may include sensitive information, would a public filing requirement be feasible with appropriate safeguards, and if so, should we require such filing, and should the public be given an opportunity to comment on them? If state plans were filed publicly, would our existing rules allowing parties to request confidential treatment for their filings provide adequate protection of sensitive information? Alternatively, given the likelihood of sensitive information and the limited scope of the Commission's review of state plans under Section 6302(e)(3)(C)(i) of the Act, should we limit the parties that are entitled to review and comment on such plans? Should we limit comment to specific issues?

We believe publishing details of public safety infrastructure is a potential security risk to states, FirstNet and public safety users. Therefore, submitted State Alternative Plans should be treated as confidential to avoid security concerns.

We believe that the FCC should not require a detailed public filing as this increases burdens, work effort and potentially extends the overall timeframe of the process. We also note that should a state decide they want to post their information to the PS Docket or circulate for comment from other states or stakeholders, than these options remain available to them.